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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Brian Whitaker**

17 Plaintiff,

18 v.

19 **Emeryville Hotel Development**
20 **Venture II, L.P., a**
21 California Limited Partnership;

22 Defendants,

23 **Case No.**

24 **Complaint For Damages And**
Injunctive Relief For
Violations Of: Americans With
25 Disabilities Act; Unruh Civil
26 Rights Act

27 Plaintiff Brian Whitaker complains of Emeryville Hotel Development
28 Venture II, L.P., a California Limited Partnership (“Defendant”), and alleges
as follows:

29 **PARTIES:**

30 1. Plaintiff is a California resident with physical disabilities. He is
31 substantially limited in his ability to walk. He suffers from a C-4 spinal cord
32 injury. He is a quadriplegic. He uses a wheelchair for mobility.

33 2. Defendant Emeryville Hotel Development Venture II, L.P., a
34 California Limited Partnership owns and operates the Four Points by

1 Sheraton, located at 1603 Powell St., Emeryville, California, currently and at
2 all times relevant to this complaint.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein, is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of other
11 Defendants are ascertained.

12 **JURISDICTION:**

13 4. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 5. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district

23 **PRELIMINARY STATEMENT**

24 7. This is a lawsuit challenging the reservation policies and practices of a
25 place of lodging. Plaintiff does not know if any physical or architectural
26 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
27 violated any construction-related accessibility standard. Instead, this is about
28 the lack of information provided on the hotel's reservation website that would

1 permit plaintiff to determine if there are rooms that would work for him.

2 8. After decades of research and findings, Congress found that there was
3 a “serious and pervasive social problem” in America: the “discriminatory
4 effects” of communication barriers to persons with disability. The data was
5 clear and embarrassing. Persons with disabilities were unable to “fully
6 participate in all aspects of society,” occupying “an inferior status in our
7 society,” often for no other reason than businesses, including hotels and
8 motels, failed to provide information to disabled travelers. Thus, Congress
9 decided “to invoke the sweep of congressional authority” and issue a “national
10 mandate for the elimination of discrimination against individuals with
11 disabilities,” and to finally ensure that persons with disabilities have “equality
12 of opportunity, full participation, independent living” and self-sufficiency.

13 9. As part of that effort, Congress passed detailed and comprehensive
14 regulations about the design of hotels and motels. But, as importantly,
15 Congress recognized that the physical accessibility of a hotel or motel means
16 little if the 61 million adults living in America with disabilities are unable to
17 determine which hotels/motels are accessible and to reserve them. Thus,
18 there is a legal mandate to provide a certain level of information to disabled
19 travelers.

20 10. But despite the rules and regulations regarding reservation procedures,
21 a 2019 industry article noted that: “the hospitality sector has largely
22 overlooked the importance of promoting accessible features to travelers.”

23 11. These issues are of paramount important. Persons with severe
24 disabilities have modified their own residences to accommodate their unique
25 needs and to ameliorate their physical limitations. But persons with disabilities
26 are never more vulnerable than when leaving their own residences and having
27 to travel and stay at unknown places of lodging. They must be able to ascertain
28 whether those places work for them.

1 **FACTUAL ALLEGATIONS:**

2 12. Plaintiff planned on making a trip in October of 2020 to the Emeryville,
3 California, area.

4 13. He chose the Four Points by Sheraton Hotel located at 1603 Powell St.,
5 Emeryville, California because this hotel was at a desirable price and location.

6 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
7 his ability to, stand, ambulate, reach for objects, transfer from his chair to other
8 equipment, and maneuver around fixed objects.

9 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
10 information about accessible features in hotel rooms so that he can confidently
11 book those rooms and travel independently and safely.

12 16. On September 14, 2020, while sitting bodily in California, Plaintiff
13 went to the Four Points by Sheraton reservation website at
14 [https://www.marriott.com/hotels/hotel-rooms/sfofp-four-points-san-](https://www.marriott.com/hotels/hotel-rooms/sfofp-four-points-san-francisco-bay-bridge/#m-guest-room-container)
15 [francisco-bay-bridge/#m-guest-room-container](https://www.marriott.com/hotels/hotel-rooms/sfofp-four-points-san-francisco-bay-bridge/#m-guest-room-container) seeking to book an accessible
16 room at the location.

17 17. This website reservation system is owned and operated by the
18 Defendants and permits guests to book rooms at the Four Points by Sheraton
19 Hotel.

20 18. Plaintiff found that there was insufficient information about the
21 accessible features in the "accessible rooms" at the Hotel to permit him to
22 assess independently whether a given hotel room would work for him.

23 19. For example, Plaintiff has had tremendous difficulty using desks and
24 tables that did not provide knee and toe clearance for a wheelchair user to pull
25 up and under the table/desk. Here, the Hotel reservation website provides no
26 information about the accessibility of the table/desk in the accessible
27 guestroom. This leaves Plaintiff unsure he will be able to use the table/desk in
28 the Hotel room, which is important to him.

1 20. As another example, Plaintiff needs to know that the bed has a
2 compliant clear space next to it so he can safely transfer from his wheelchair to
3 the bed. Here the Hotel website provides no information about the
4 accessibility of the clear space next to the bed.

5 21. As another example, Plaintiff often uses a type of wheelchair that he
6 cannot get wet when he showers. He needs to roll into the shower enclosure
7 and then transfer to an in-shower seat and push his chair out of the path of the
8 water. But there is no information on the Hotel reservation website about
9 whether the roll-in shower has an in-shower seat or any grab bars mounted
10 above the seat for transfer (required by the ADA). So, Plaintiff does not know
11 whether he can use this shower.

12 22. Making matters worse, the description that accompanies the photos of
13 the rooms states: “Images may not fully represent the room features you
14 booked”, which means Plaintiff cannot trust the photos used with the room
15 descriptions.

16 23. Plaintiff does not need an exhaustive list of accessibility features.
17 Plaintiff does not need an accessibility survey to determine if a room works for
18 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
19 handful of features to be identified and described with a modest level of detail:

- 20 • For the doors, Plaintiff simply needs to know if he can get into the hotel
21 room and into the bathroom. This is a problem that has created
22 tremendous problems for the Plaintiff in the past. A simple statement
23 that the hotel room entrance and interior doors provide at least 32
24 inches of clearance is enough to provide Plaintiff this critical piece of
25 information about whether he can fit his wheelchair into the hotel
26 rooms.
- 27 • For the beds themselves, the only thing Plaintiff needs to know (and the
28 only thing regulated by the ADA Standards) is whether he can actually

1 get to (and into) the bed, i.e., that there is at least 30 inches width on the
2 side of the bed so his wheelchair can get up next to the bed for transfer.
3 This is critical information because Plaintiff cannot walk and needs to
4 pull his wheelchair alongside the bed.

- 5 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
6 know that it has sufficient knee and toe clearance so that he can use it.
7 A simple statement like “the desk provides knee and toe clearance that
8 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
9 deep” is more than sufficient. Because Plaintiff is confined to a
10 wheelchair, he needs to know this information to determine if the desk
11 is accessible to and useable by him.
- 12 • For the restroom toilet, Plaintiff only needs to know two things that
13 determine if he can transfer to and use the toilet; (1) that the toilet seat
14 height is between 17-19 inches (as required by the ADA Standards) and
15 (2) that it has the two required grab bars to facilitate transfer.
- 16 • For the restroom sink, the Plaintiff two things that will determine
17 whether he can use the sink from his wheelchair: (1) can he safely get his
18 knees under the toilet? To wit: does the sink provide the knee clearance
19 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
20 under the sink wrapped with insulation to protect against burning
21 contact? The second thing is whether the lavatory mirror is mounted at
22 a lowered height so that wheelchair users can sue it. A simple statement
23 like: “the lavatory sink provides knee clearance of at least 30 inches
24 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
25 is wrapped, and the lowest reflective edge of the mirror is no more than
26 40 inches high” would suffice.
- 27 • Finally, for the shower, Plaintiff needs to know only a handful of things:
28 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-

1 in), (2) whether it has an in-shower seat; (3) that there are grab bars
2 mounted on the walls; (4) that there is a detachable hand-held shower
3 wand for washing himself and (5) that the wall mounted accessories and
4 equipment are all within 48 inches height.

5 24. This small list of items are the bare necessities that Plaintiff must know
6 to make an independent assessment of whether the “accessible” hotel room
7 works for him. These things comprise the basics of what information is
8 reasonably necessary for Plaintiff (or any wheelchair user) to assess
9 independently whether a given hotel or guest room meets his or her
10 accessibility needs.

11 25. Other accessibility requirements such as slopes of surfaces, whether the
12 hand-held shower wand has a non-positive shut off valve, the temperature
13 regulator, the tensile strength and rotational design of grab bars, and so many
14 more minute and technical requirements under the ADA are beyond what is a
15 reasonable level of detail and Plaintiff does not expect or demand that such
16 information is provided.

17 26. But because the Defendants have failed to identify and describe the core
18 accessibility features in enough detail to reasonably permit individuals with
19 disabilities to assess independently whether a given hotel or guest room meets
20 his accessibility needs, the Defendants fail to comply with its ADA obligations
21 and the result is that the Plaintiff is unable to engage in an online booking of
22 the hotel room with any confidence or knowledge about whether the room will
23 actually work for him due to his disability.

24 27. This lack of information created difficulty for the Plaintiff and the idea
25 of trying to book this room -- essentially ignorant about its accessibility --
26 caused difficulty and discomfort for the Plaintiff and deterred him from
27 booking a room at the Hotel

28 28. Plaintiff travels frequently and extensively, not only for non-litigation

1 reasons but also because he is an ADA tester and actively engaged in finding
2 law breaking businesses and hauling them before the courts to be penalized
3 and forced to comply with the law.

4 29. As he has in the past, Plaintiff will continue to travel to Emeryville on a
5 regular and ongoing basis and will patronize this Hotel once it has been
6 represented to him that the Defendant has changed its policies to comply with
7 the law and to determine if the Hotel is physically accessible as well as
8 complying with required reservation procedures. Plaintiff will, therefore, be
9 discriminated against again, i.e., be denied his lawfully entitled access, unless
10 and until the Defendant is forced to comply with the law.

11 30. Plaintiff has reason and motivation to use the Defendant's Hotel
12 reservation system and to stay at the Defendant's Hotel in the future. Among
13 his reasons and motivations are to assess these policies and facilities for
14 compliance with the ADA and to see his lawsuit through to successful
15 conclusion that will redound to the benefit of himself and all other similarly
16 situated. Thus, Plaintiff routinely revisits and uses the facilities and
17 accommodations of places he has sued to confirm compliance and to enjoy
18 standing to effectuate the relief promised by the ADA.

19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
20 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 32. Under the ADA, it is an act of discrimination to fail to make reasonable
26 modifications in policies, practices, or procedures when such modifications
27 are necessary to afford goods, services, facilities, privileges advantages or
28 accommodations to person with disabilities unless the entity can demonstrate

1 that taking such steps would fundamentally alter the nature of the those goods,
2 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
3 12182(B)(2)(A)(ii).

4 33. Specifically, with respect to reservations by places of lodging, a
5 defendant must ensure that its reservation system, including reservations
6 made by “any means,” including by third parties, shall:

- 7 a. Ensure that individuals with disabilities can make
8 reservations for accessible guest rooms during the same
9 hours and in the same manner as individuals who do not
10 need accessible rooms;
- 11 b. Identify and describe accessible features in the hotels and
12 guest rooms offered through its reservations service in
13 enough detail to reasonably permit individuals with
14 disabilities to assess independently whether a given hotel
15 or guest room meets his or her accessibility needs; and
- 16 c. Reserve, upon request, accessible guest rooms or specific
17 types of guest rooms and ensure that the guest rooms
18 requested are blocked and removed from all reservations
19 systems.

20 *See 28 C.F.R. § 36.302(e).*

21 34. Here, the defendant failed to modify its reservation policies and
22 procedures to ensure that it identified and described accessible features in the
23 hotels and guest rooms in enough detail to reasonably permit individuals with
24 disabilities to assess independently whether a given hotel or guest room meets
25 his or her accessibility needs and failed to ensure that individuals with
26 disabilities can make reservations for accessible guest rooms during the same
27 hours and in the same manner as individuals who do not need accessible
28 rooms.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 35. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code §51(b).

11 36. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 37. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, *inter alia*, failing to comply with the ADA with respect to its
15 reservation policies and practices.

16 38. Because the violation of the Unruh Civil Rights Act resulted in difficulty
17 and discomfort for the plaintiff, the defendants are also each responsible for
18 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. Damages under the Unruh Civil Rights Act, which provides for actual
27 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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5 Dated: January 3, 2021

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8 CENTER FOR DISABILITY ACCESS



9 By: _____

10 Russell Handy, Esq.
11 Attorneys for Plaintiff

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